

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50510 GFK

KARLA M. MATUSESKI-HOFFORD,

Debtor.

NOTICE OF HEARING AND MOTION FOR TURNOVER

TO: THE ABOVE-NAMED DEBTOR, HER ATTORNEY JOHN B. SCHULTE, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Robert R. Kanuit, the duly-appointed and acting trustee in the above-captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 8, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F. Kishel, Courtroom No. 2, U.S. Courthouse, 515 West Fifth Street, Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 1, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than August 29, 2004, which is ten (10) days before the time set for the hearing. **If no response is timely filed, the Court may in its discretion enter an order granting turnover without a hearing.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy 4002, and Local Rule 1070-1. The petition commencing the debtor's Chapter 7 case was filed on April 29, 2004. Robert R. Kanuit was appointed as Chapter 7 Trustee on April 30, 2004. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. 521, 541, 542 and 704 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property of the estate.

6. By correspondence dated July 8, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property of the estate, specifically (i) \$92.68 contained in a bank account at Lake State Federal Credit Union; (ii) 1988 Pontiac convertible; and (iii) 1991 Chevrolet pickup.

7. The debtor has failed to turn over the property.

8. Because the debtor has failed to turn over the property, the trustee has been unable

to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. 704.

9. In order to ensure that the debtor complies with any order issued by the Court as a result of this motion in a timely manner, the trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. 727(a)(6)(A) to allow the trustee to pursue revocation under 727(d)(3) should the debtor not promptly comply with its provisions.

10. This verified motion is based upon all of the files and records herein.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtor to turn over to the trustee the property described above.
2. Directing that the failure to comply with the order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. 727(a)(6)(A).
3. For costs and attorney fees of \$250.00 in connection with bringing this motion.
4. For such other relief as the Court deems just and equitable.

/e/ Robert R. Kanuit
Robert R. Kanuit (#0252530)
4815 W. Arrowhead Road, #230
Hermantown, MN 55811
(218) 722-7722

VERIFICATION

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 27th day of July, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit

July 8, 2004

John B. Schulte
Begeske Law Offices
713 Board of Trade Building
301 West First Street
Duluth, MN 55802

RE: Bankruptcy Case No.: 04-50510
Debtor: Karla M. Matuseski-Hofford
Our File No.: 04-100.70

Dear Mr. Schulte:

I am in receipt of your client's amended Schedule C. The 1988 Pontiac convertible and the 1991 Chevy pickup are not exempt. Please ask your client to contact me and advise whether she will purchase the vehicles from me at the claimed values or whether she wants to make arrangements to turn them over. Also, I still have not received the check for the bank account balance and the signed Tax Refund Stipulation.

If I have not heard from your client and received the above items within 10 days of the date of this letter, I will be filing a motion for turnover and seeking attorney's fees for the costs of bringing that motion.

Thank you.

Sincerely,

Robert R. Kanuit

RRK:cjk

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50510 GFK

KARLA M. MATUSESKI-HOFFORD,

Debtor.

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Robert R. Kanuit, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of his Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on April 29, 2004, and is pending before this Court.
2. Robert R. Kanuit was appointed as Chapter 7 trustee on April 30, 2004.
3. The trustee made demand upon the debtor for turnover of property needed to administer the bankruptcy case on July 8, 2004.
4. The debtor failed to supply necessary property to the trustee in response to the turnover demand.
5. The debtor continues to withhold the property necessary to conclude administration of the bankruptcy case.

DISCUSSION

1. Turnover of Property.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over property necessary to complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part:

[t]he debtor shall -- . . .

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; .

..

The law interpreting the above sections of the Code is well settled concerning a debtor's affirmative obligation to cooperate with the trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D.Minn. 1990); In re: Bentley, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D.Mass. 1990).

Due to the debtor's failure to supply necessary property, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor provide (i) \$92.68 contained in a bank account at Lake State Federal Credit Union; (ii) 1988 Pontiac convertible; and (iii) 1991 Chevrolet pickup.

2. Forfeiture of Discharge.

Under 11 U.S.C. § 727(a)(6)(A), if debtor refuses to comply with court orders, discharge of debts may be withheld. In this case the trustee requests that if the trustee's motion is granted, the terms of the order be applicable under 11 U.S.C. § 727(a)(6)(A) so that the debtor will have an additional incentive to perform in a timely manner.

Based upon the foregoing, the Chapter 7 trustee is entitled to an order requiring that the debtor turn over nonexempt funds, if any, and property requested in Exhibit A to the motion so that he may conclude administration of the bankruptcy estate. To expedite resolution of this matter, the trustee requests that the order be designated a lawful order pursuant to 11 U.S.C. § 727(a)(6)(A).

Dated this 27th day of July, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit

VERIFICATION

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 27th day of July, 2004.

/s/ Robert R. Kanuit
Robert R. Kanuit

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case No.: 04-50510 GFK

KARLA M. MATUSESKI-HOFFORD,

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

The undersigned, being an employee of Kanuit & Bray, Ltd., attorneys licensed to practice law in this Court, with office address of 4815 W. Arrowhead Road, Hermantown, MN 55811, declares under penalty of perjury that on the date stated below, she served the annexed **Notice of Hearing and Verified Motion for Turnover, Memorandum of Law, and (proposed) Order** upon the persons/entities named below by mailing to them copies thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Hermantown, Minnesota, addressed as follows:

Karla M. Matuseski-Hofford
87137 Kettle Shores Loop
Sturgeon Lake, MN 55783

John B. Schulte
Begeske Law Offices
301 W. 1st Street, Suite 713
Duluth, MN 55802

U.S. Department of Justice
Office of the United States Trustee
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

Dated this 27th day of July, 2004.

/e/ Bonnie K. Vanderpool
Bonnie K. Vanderpool

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50510 GFK

KARLA M. MATUSESKI-HOFFORD,

Debtor.

ORDER

The above-captioned matter came before the Court on the 8th day of September, 2004, on motion by the Chapter 7 trustee, Robert R. Kanuit, seeking an order requiring the debtor turn over property, specifically: (i) \$92.68 contained in a bank account at Lake State Federal Credit Union; (ii) 1988 Pontiac convertible; and (iii) 1991 Chevrolet pickup.

Robert R. Kanuit appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

1. That the debtor shall turn over to the trustee the following property: (i) \$92.68 contained in a bank account at Lake State Federal Credit Union; (ii) 1988 Pontiac convertible; and (iii) 1991 Chevrolet pickup, no later than August 27, 2004.

2. That this order shall constitute a lawful order within the meaning of 11 U.S.C. 727(a)(6)(A) for purposes of discharge revocation should the debtor fail to comply with its terms in a timely manner.

3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Kanuit & Bray, Ltd., within 10 days of entry of this order.

Dated this _____ day of _____, 2004.

Honorable Gregory F. Kishel
United States Bankruptcy Judge